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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States Parties due in 1992

Addendum

JORDAN

[24 November 1994]

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Part One

I. LAND AND PEOPLE

1. Designation: The name "Jordan" is applied to the area situated to the east of the river Jordan, the source of which is located in Mount Hermon. In Arabic, the word means power and victory.

2. Location: Jordan is situated in the south-western part of the Asian continent between longitudes 29° 11" and 33° 22" N and latitudes 34° 59" and 39° 18" S.

3. Language: Arabic is the official language and English and other languages are widely used.

4. Religion: Islam, 95 per cent, Christianity 5 per cent.

5. Size of population: 4,012,000, according to the final statistics for 1992, of whom 3,129,000 live in urban and 883,000 in rural areas. The population growth rate amounts to 3.1 per cent.

II. GENERAL POLITICAL STRUCTURE

6. Since the most ancient times, Jordan has been an area of human settlement and flourishing civilization which attracted numerous waves of Arab Semitic migration, the traces of whose civilizations can still be seen today. From the beginning of the twelfth century A.D., the area was governed by the Mamluk and Ottoman empires and, like neighbouring Arab countries, Jordan had local administrative councils in which the population participated. However, in the latter phases of Ottoman rule, the population suffered from discrimination, which induced it to protest, reject the Turanian policy and revolt against the form of government which that policy implied. That revolt was an inevitable result of the policy of Turkification, the widespread injustice, the deplorable economic situation, the increasing administrative corruption and the inability of the Ottoman State to maintain security and stability in its Arab provinces. The aim of the national revival plan, which was inherent in the large-scale Arab revolt that broke out on 6 October 1916, was to unite the eastern Arab countries in a single Arab State comprising Iraq, the Hijaz and Syria, including Jordan and Palestine.

7. Accordingly, on 5 October 1918, Emir Faisal announced the formation of the first Arab Government at Damascus. However, on 22 October of the same year, Great Britain issued a declaration dividing historical Syria into three areas pursuant to the Sykes-Picot Agreement concluded in 1916 and in order to enable Great Britain to fulfil its promise, made to the Zionist movement, to establish a national homeland for the Jews in Palestine. However, this division was rejected by the representatives of the people of the eastern part of the Arab world at the General Syrian Congress which met at Damascus on 6-8 March 1920. They affirmed the unity and independence of Syria within its natural boundaries and acknowledged Faisal I as its king. Unfortunately, Great Britain and France did not recognize the will of the nation and, at the San Remo Conference on 25 April 1920, agreed to place Syria and Lebanon under French mandate and Iraq, Palestine and Transjordan under British mandate. In

spite of Arab opposition to these imperialist schemes, they were forcibly imposed as a fait accompli as a result of the military superiority which the colonial powers obtained over the Arab freedom-fighters in numerous battles, the last of which was fought at Maisalun on 24 July 1920.

8. British forces withdrew from all Syrian territory shortly before the collapse of the Arab Government in Syria and the French subsequently occupied Damascus although their forces did not enter Jordanian territory, which remained free from foreign military occupation. When it was decided to place Jordan under British influence in accordance with the Sykes-Picot Agreement, the British High Commissioner in Palestine delegated a number of his officers to administer the various parts of Transjordan.

9. On 29 March 1921, the British reached a political settlement with Emir Abdullah under the terms of which the first unified national Government was formed under his leadership in Transjordan. Prominent personalities from the Istiqlal (Independence) party participated in that Government, the establishment of which provided a clear indication of the depth of Arab national feeling among the country's population. However, the next four years witnessed a bitter conflict between the new Government's national aspirations and endeavours to liberate Syria, on the one hand, and the interests of Great Britain and France in the region. In the latter part of August 1924, this conflict culminated in the imposition of British mandatory control over the country's administrative, financial and military affairs. Although Great Britain recognized the independence of the Emirate of Transjordan on 25 May 1923 and promised to conclude an agreement defining the relationship between the two countries and clarifying Transjordan's constitutional status, the first British-Transjordanian treaty concluded on 20 February 1928 failed to meet Jordanian demands for an independent and fully sovereign State. The treaty aroused the indignation and anger of the Jordanian people and prompted them to hold their first national congress to consider the provisions of the treaty and agree on a political plan of action. The congress, which was held at Amman on 25 July 1928, regarded itself as the legitimate representative of the Jordanian people and established an Executive Committee to direct the Jordanian national movement. The "Jordanian National Charter" which it issued was the first national political document containing a clearly defined programme which defined the principles on which the Emirate's current political status should be based. The main principles were:

1. The Emirate of Transjordan is an independent sovereign Arab State with recognized natural boundaries. It is administered by an independent constitutional Government headed by H.R.H. Emir Abdullah ibn al-Hussein and, after him, by his successors.

2. The principle of the mandate is recognized only in the form of pure technical assistance in the country's interest.

3. The Balfour Declaration calling for the establishment of a national homeland for the Jews is regarded as contrary to the pledges made by Great Britain.

4. Any general parliamentary elections in Transjordan in a manner inconsistent with the principles of proper representation and on the basis of

the Government's non-accountability to Parliament shall not be regarded as an election reflecting the will and national sovereignty of the nation in accordance with constitutional principles.

5. Any military enlistment that is not decreed by a constitutional and accountable Government is rejected on the ground that enlistment forms an integral part of national sovereignty.

10. These important principles guided the Jordanian people's political struggle for many subsequent years until the conclusion of the second British-Jordanian Treaty on 17 June 1946, under the terms of which Great Britain recognized the independence of Transjordan under the name of the Hashemite Kingdom of Jordan.

11. On 25 May 1946, the Jordanian Legislative Assembly met and decided unanimously to declare Jordan a fully independent State with a hereditary monarchy and a representative system of government. It also decided to swear allegiance to King Abdullah ibn al-Hussein as the constitutional monarch and head of the Jordanian State and to approve the corresponding amendment to the Jordanian Basic Law. In 1950, the Jordanian National Assembly decided to approve the unification of the two banks of the Jordan within the framework of the Hashemite Kingdom of Jordan. The country continued to develop its political and institutional structures and King Talal I promulgated the new Jordanian Constitution after its adoption by the National Assembly in January 1952. The Constitution stipulated that the Jordanian people formed part of the Arab nation, that the system of government in the Kingdom was a constitutional monarchy and that the nation was the source of authority.

12. On 11 August 1952, King Hussein acceded to the throne of the Hashemite Kingdom of Jordan and, when His Majesty assumed his constitutional powers on 2 May 1953, the democratic process began to be consolidated in the country. The phase of popular participation was characterized by a general trend towards greater freedom and the development and modernization of the State's institutions. In 1954, the Constitution was amended in order to further consolidate the process of democratization. Under the terms of this amendment, which entered into force on 1 November 1955, the Government became accountable to the House of Representatives, to which it was obliged to submit its statement of ministerial policy for a vote of confidence.

13. On 1 March 1956, H.M. King Hussein Arabized the army command and dismissed its British officers. This step constituted a considerable achievement which affirmed the concept of national Arab sovereignty.

14. In the latter part of 1956, the first Jordanian parliamentary elections were held on a multiparty political basis and a parliamentary Government was formed under which the Arab Solidarity Pact was signed in January 1957. The British-Jordanian Treaty was denounced on 13 March of the same year and the British forces left the country. However, this stage was short-lived, since the democratic experiment ran into difficulties for various internal and external reasons. When Israel launched its war against the Arab States on 5 June 1967, Jordan was obliged to enter the war by virtue of its commitment to the Pact of the League of Arab States and the Arab Joint Defence

Treaty. Israel's occupation of the West Bank of the Kingdom, as well as the Golan and Sinai, was a crushing blow that had a severe impact on all aspects of life in Jordan and the Arab World as a whole.

15. By virtue of its stability, the increasing general political awareness of its citizens and the tremendous socio-economic changes that had taken place in the country, Jordan entered a new phase in the mid-1970s during which significant progress was made, particularly through the implementation of a number of major production projects and completion of most of the Kingdom's infrastructure. The economy also achieved high rates of growth and the education system was expanded considerably.

16. Since his accession to the Jordanian throne, H.M. King Hussein has consistently sought to safeguard the Constitution and promote the concept of democracy. However, parliamentary life in Jordan reached a critical turning-point due to the circumstances of the Israeli occupation of the West Bank in 1967 and the Arab and international situation.

17. On 31 July 1988, Jordan announced its decision to sever its legal and administrative links with the West Bank. The decision was taken in accordance with the wishes of the Palestine Liberation Organization and the prevailing Arab conviction that such a step would help to support the struggle of the Palestinian people and their right to self-determination on their national soil.

18. The general elections held in the latter part of 1989 constituted the cornerstone for the process of democratization in which they heralded a new phase. This was accompanied by a considerable increase in political activity in which everyone participated. Further elections were held in 1993.

19. The Jordanian State is a constitutional and democratic State in the modern sense of the term; the State belongs to all its citizens and derives its strength from its declared intention to put into practice the principles of equality, justice and equal opportunity and to provide ample scope for the Jordanian people to participate in decision-making concerning their affairs in such a way as to ensure that citizens have peace of mind, confidence in the future, a desire to safeguard the State's institutions and a sense of pride in their citizenship. This is a constitutional State which is committed to the principle of the rule of law and derives its legitimacy, power and effectiveness from the free will of the people. All its authorities are committed to providing the legal, judicial and administrative guarantees needed for the protection of human rights, human dignity and fundamental freedoms, the principles of which were firmly established by Islam and confirmed in the Universal Declaration of Human Rights and all the international covenants and conventions adopted by the United Nations in this regard. The main fundamental principles on which a constitutional State is based are:

1. A working commitment to the letter and spirit of the provisions of the Constitution on the part of the three authorities, within the framework of the precedence of right and justice.

2. A commitment to the principle of the rule of law, under the full supervision of an independent judicial authority.

3. A commitment to the exercise of democracy and to the principles and requirements of social justice.

4. The imperative requirement that legislation in general, and legislation concerning political parties, elections and publications in particular, must respect the fundamental rights and freedoms of citizens.

5. Adoption of the method of democratic dialogue to express opinion.

6. The need for all governmental institutions to fulfil their duty when dealing with citizens and bodies corporate, whom they should serve on a basis of full equality and non-exploitation.

20. The system of government in Jordan is parliamentary, with a hereditary monarchy (art. 1 of the Constitution).

21. The people are the source of authority, which they exercise in the manner specified in the Constitution (art. 24). Articles 25, 26 and 27 stipulate as follows:

(a) Legislative authority is vested in the National Assembly and the King. The National Assembly consists of the Senate and the House of Representatives;

(b) Executive authority is vested in the King and exercised by his Ministers in accordance with the Constitution;

(c) Judicial authority is exercised by the various types and levels of courts, all the judgements of which are handed down in accordance with the law and in the name of the King.

22. With regard to the executive authority (the Government), H.M. the King appoints and dismisses or accepts the resignation of the Prime Minister and appoints, dismisses, or accepts the resignation of other Ministers on the basis of a recommendation by the Prime Minister (art. 35 of the Constitution). The Council of Ministers usually consists of the Prime Minister and such number of Ministers as necessity and the public interest may demand. The Council of Ministers is entrusted with the conduct of all affairs of State, whether internal or external, other than those which are entrusted under the Constitution or any other legislative enactment to any other person or body (arts. 41 and 45 of the Constitution).

23. The powers of the Prime Minister, the Ministers and the Council of Ministers are defined in regulations promulgated by the Council of Ministers and approved by the King (art. 45, para. 2, of the Constitution). The Prime Minister and the Ministers are jointly accountable to the House of Representatives for the general policy of the State (art. 51) and a vote of confidence in the Government or any of its Ministers may be required of the House of Representatives (art. 53, para. 1, of the Constitution).

III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

24. The National Charter defines the concept of a constitutional State and political pluralism. It regards a constitutional State as a democratic State which is committed to the principle of the rule of law, derives its legitimacy, power and effectiveness from the free will of the people and ensures that all its authorities respect the legal, judicial and administrative safeguards needed to protect human rights, human dignity and fundamental freedoms. In a clear reference to the importance of the practical application of these principles and rules, the Charter stipulates that the Jordanian State is a constitutional State; Jordanians are equal before the law, regardless of any differences in their views and opinions; the State derives its strength from its declared intention to put into practice the principles of equality, justice and equal opportunity and to provide ample scope for the Jordanian people to participate in decision-making concerning all their affairs. In order to consolidate the democratic structure of the State and Jordanian society, the Charter indicates that efforts must be made to achieve the following objectives:

(a) The establishment, under the terms of a special legislative act, of an independent administrative tribunal to inspect and control administrative departments, monitor the conduct of their personnel and submit reports to the National Assembly and the Council of Ministers, in accordance with the provisions of the Constitution and the laws and regulations in force, without prejudice to the independence and jurisdiction of the courts of law;

(b) The establishment, under the terms of a special legislative act, of an independent body to modernize and update legislation;

(c) The establishment of a Constitutional Court to interpret the provisions of the Constitution, adjudicate in disputes and appeals concerning the constitutionality of laws and regulations and settle constitutional problems referred to it by the courts in cases brought before them;

(d) Standardization of legislation concerning states of emergency and grave emergency, as provided for in the Constitution;

(e) Restoration to the National Assembly of the legislative powers vested in the Council of Ministers, in accordance with articles 114 and 120 of the Constitution, concerning the regulation of government activities, procurement and the civil service;

(f) Introduction of the requisite constitutional amendments, in order to meet the requirements for development, and abolition of the constitutional provisions that have lost their raison d'être.

The Charter also emphasizes that the judiciary alone is competent to adjudicate in disputes concerning the application of any of the laws in force.

25. The National Charter covers matters, such as human rights, to which no direct reference is made in the Constitution.

26. The general legal framework guaranteeing the protection of human rights can be described as follows:

(a) In practice, all the various government agencies are concerned, either directly or indirectly, with the protection of these rights, which are not dealt with separately by any special judicial or administrative agency. The courts are accessible to all and are safeguarded from interference in their affairs (art. 101 of the Constitution). The ordinary courts in the Kingdom exercise jurisdiction over all persons in all civil and criminal matters, including actions brought by or against the Government, with the sole exception of those in which, under the provisions of the Constitution or any other legislation in force, jurisdiction is vested in religious or special courts (art. 102). Accordingly, everyone has the right to resort to the courts in any matter whatsoever, including matters concerning any violation of human rights;

(b) The rights and obligations of Jordanians are detailed in articles 5-23 of the Constitution. The National Charter further confirms these rights and various national legislative enactments clearly specify these rights, as well as the procedures to ensure their full protection. In practice, the Government has found that the provisions of its various legislative enactments are in conformity with, and in some cases have preceded, incorporated or transcended, the texts of international conventions. Consequently, the Government has not felt any need to promulgate these conventions in separate instruments in order to confirm the rights recognized therein, since they are already provided for in various legislative enactments;

(c) The international conventions which Jordan has ratified have the force of law and take precedence over all local legislation, with the exception of the Constitution. The national courts accord precedence to international conventions, except in cases which pose a threat to public order. This affirmation is confirmed by judgement 32/82 of 6 February 1982 in which the Court of Cassation ruled that international covenants and treaties take precedence over national legislation;

(d) In addition to the effective role which government agencies and official institutions are playing in the promotion of human rights and fundamental freedoms, in which they are assisted by the educational endeavours of the various academic institutions, both the Arab Organization for Human Rights and Amnesty International have branches in Jordan. The Government is in the process of establishing a specialized centre for the study of freedom, democracy and human rights in the Arab World and a Royal Commission has been formed for this purpose.

Part Two

I. INFORMATION OF A GENERAL NATURE

27. Jordanian national legislation guarantees public rights and freedoms and endeavours to safeguard them from any encroachment or abuse in order to ensure a decent life for citizens. This protection is embodied in the Constitution and various other legislative texts. Article 6, paragraph 1, of the

Constitution stipulates that: "Jordanians are equal before the law and there shall be no discrimination between them with regard to their rights and duties on grounds of race, language or religion". Article 7 stipulates that: "Liberty of person shall be safeguarded". Article 8 stipulates that: "No one may be arrested or imprisoned except in accordance with the provisions of the law".

28. Sections I and II of the Jordanian National Charter, which constitutes a major landmark in the country's progress, affirm and consolidate the sound fundamental principles that protect the course of democracy, guarantee the rights and freedoms of individuals, safeguard their dignity and ensure their enjoyment of a decent life.

29. Article 1, paragraph 1, of Section II of the Charter can be said to embody Jordan's policy in this regard, since it stipulates that Jordan is a constitutional and democratic State that derives its legitimacy, authority and effectiveness from the free will of its people and all the authorities therein have an obligation to respect legal, judicial and administrative safeguards and protect human rights, dignity and fundamental freedoms, the principles of which were firmly established by Islam and affirmed in the Universal Declaration of Human Rights and all the international covenants and conventions adopted by the United Nations in this regard.

30. Article 2, paragraph 1, stipulates that the letter and spirit of the provisions of the Constitution must be respected in the work of the legislative, executive and judicial authorities within the framework of the prevalence of right and justice.

31. Islam is the religion of the State and the Islamic Shari'a is a principal source of legislation (see art. 2 of the Constitution and the text of the Jordanian Civil Code). Accordingly, this religion, the precepts of which formed the nucleus of Arab Islamic civilization, which adopted an open-minded approach to human civilization as a whole, still forms the basis of the identity of the Jordanian people, based on respect for the human intellect, belief in dialogue, recognition of the right of others to hold differing opinions, respect for the opinions of others, rejection of political and social violence and the belief that there should be no compulsion in religion and that there should be no despotism, confessionalism or regionalism.

32. The following is an analysis of the Jordanian legislative texts that seek to eliminate the crime of torture, as defined in the Convention, the provisions of which are in keeping with the objectives of this local legislation that prescribes appropriate criminal penalties for the perpetrators of that crime.

33. The Jordanian Penal Code deals with this matter under the heading "Extraction of confessions and information" (see arts. 178, 179, 208, 346 and 347 of the Jordanian Penal Code).

34. Under the terms of the Jordanian Code of Criminal Procedure, the investigating authority is prohibited from obtaining information or a confession through the exertion of physical or mental duress or under the

influence of a promise or threat. Accordingly, the Jordanian legislature has surrounded the interrogation process with numerous safeguards, the violation of which renders the interrogation null and void.

35. The Jordanian legislature has also adopted the principle of the separation of authorities and the need for balanced cooperation among them. The Jordanian Constitution makes provision for three authorities and specifies their respective fields of jurisdiction. Of these three authorities (legislative, executive and judicial), it is the latter which is competent to settle disputes and ensure the triumph of justice. Article 20 of the Jordanian Constitution stipulates that: "No one may be arrested or imprisoned except in accordance with the provisions of the law". The Jordanian Penal Code confirms this principle of legality by stipulating that: "It shall not be permissible to impose a penalty that was not provided for by law at the time of commission of the offence and the offence shall be deemed to be committed if the acts constituting the offence were carried out, regardless of the time of occurrence of its result". These legislative texts signify that the Jordanian legislature confines the definition of crime and punishment to a single written source, namely the Schedule of Criminal Legislation. The law alone defines criminal acts, specifies their component elements and prescribes the type and severity of the penalties to be imposed therefor.

36. In this regard, we wish to refer to the articles of the Jordanian Penal Code that specify the types of offences, as well as the types of penalties prescribed therefor. Article 55 classifies offences as felonies, misdemeanours or contraventions, which must be punished as such. Article 14 defines felonies as offences punishable by the following penalties: death, penal servitude for life, life imprisonment, a fixed term of penal servitude or a fixed term of imprisonment.

37. Article 15 defines misdemeanours as offences punishable by imprisonment, a fine or a bail bond.

38. Article 16 defines contraventions as offences punishable by an edifying period of detention or a fine. In this way, the Jordanian legislature has established a legal basis for punishment, which renders it acceptable to the public in so far as it is imposed in their interest. Jordanian law also designates the authority responsible for the execution of these criminal penalties, which can be inflicted only after a final and definitive judgement has been handed down by a competent court following a fair trial.

39. Supervision of prisons and of the manner in which criminal penalties or judgements are executed is governed by the provisions of article 8 of the Prisons Act No. 23 of 1953 and articles 106, paragraph 1, and 203 of the Code of Criminal Procedure.

40. The Attorney-General, who is the head of the Department of Public Prosecutions, and the presidents of the courts of first instance and the courts of appeal are the authorities responsible for the inspection of the public prisons situated within their areas of jurisdiction. It is their responsibility to ensure that no one is imprisoned or detained unlawfully and they have a right to examine the prison registers and the arrest and detention warrants, of which they may also take copies. They can contact any detainees

or prisoners in order to hear any complaints that they might wish to make and the governor and staff of the prison have an obligation to provide those authorities with all the assistance needed to enable them to obtain the information that they require under the terms of article 106, paragraph 1, of the Code of Criminal Procedure.

41. Under article 107 of the said Code, every detainee or prisoner has the right to submit to the prison governor, at any time, a written or verbal complaint for transmission to the Department of Public Prosecutions. The governor is obliged to accept and transmit it immediately after recording it in the prison register. Responsibility for the execution of criminal judgements is vested in the penal institutions run by the Department of Prisons, which administers the prisons and assumes responsibility for the custody and security of the prisoners. Under the terms of the Public Security Act No. 38 of 1965, the Department of Prisons is a branch of Public Security the duties of which, in accordance with article 4, paragraph 3, thereof, include the administration of prisons and the guarding of prisoners. In accordance with article 3, paragraph 1, the public security authorities report to the Minister of the Interior.

42. The provisions of the Prisons Act No. 23 of 1953 include a set of legal rules concerning the execution of penalties, under which prisoners have a guaranteed right to health care. The post of prison medical officer can be held by any physician whom the Ministry of Health assigns for that purpose (art. 6 of the Prisons Act). Article 7 contains details concerning the medical care of prisoners and the manner in which the prison medical officer must discharge his duty. Under article 6, paragraph 4, prisoners must undergo a medical examination at the time of their admission to the prison and before their release. The medical officer must record his observations concerning the prisoner's state of health in order to ensure his well-being.

43. Jordan's penal institutions also pay due regard to the question of classification from the standpoint of methods of treatment and specialization so that every convicted person is subjected to an appropriate method of punishment (see arts. 19 and 20 of the Prisons Act).

44. It should be noted that no exceptional circumstances can be invoked as a justification for torture, since the human person is protected in all circumstances by the provisions of the Constitution and the law.

45. The Code of Criminal Procedure confirms that the provisions concerning arrest and detention must be applied properly and without any abuse and may be resorted to only if the offence committed so requires. No form of torture may be practised against any arrested person, whose physical and mental well-being must be protected.

46. If there is any reasonable cause to believe that an act of torture has been committed against any person, a rapid and impartial investigation is instituted in order to establish the truth of the matter. If a crime of torture is found to have been committed, criminal and disciplinary sanctions are imposed on the public official responsible therefor. In this regard, it should be noted that the prohibition of torture or ill-treatment of accused persons is one of the principal topics included in the curricula of the

training courses for persons working in public security agencies in order to ensure that all the rights of accused persons are protected at all times when they are in the custody of those agencies. In this connection, an agreement has been reached with the branch of Amnesty International in Jordan concerning the holding of a course on human rights with a view to further consolidating the sound manner in which the police operate in Jordan.

II. MEASURES TO IMPLEMENT THE PROVISIONS OF PART I OF THE CONVENTION

Definition of the crime of torture

47. It should be noted that, although Jordan has not promulgated special legislation to regulate all aspects of protection from subjection to torture and cruel or inhuman treatment, the Constitution, which is the source of authority that protects freedoms, makes provision for numerous means to deal with this question. For example, article 7 of the Constitution stipulates that liberty of person must be safeguarded. Citizens are protected from unlawful arrest, since no one may be arrested or detained except in accordance with the provisions of the law. Moreover, the rights of accused persons must not be restricted to an extent exceeding that required for the conduct of a fair trial.

48. However, under criminal law, some types of acts are regarded as crimes of torture, as can be seen from the description of the offence of extracting a confession or information as set forth in article 208 of the Jordanian Penal Code. Paragraph 1 of that article stipulates that: "Anyone who inflicts on a person any form of unlawful violence or harsh treatment with a view to obtaining a confession to an offence or information thereon shall be punished by imprisonment for a period of three months to three years". Paragraph 2 of the same article further stipulates that: "If such acts of violence or harsh treatment lead to illness or injury, the penalty shall be imprisonment for a period of six months to three years unless the said acts warrant a more severe penalty".

49. The first point to be noted concerning those provisions is that they apply to all persons, whether public officials or ordinary individuals, and are therefore comprehensive in their scope. The crime of torture consisting in the unlawful use of harsh treatment for the purpose of obtaining a confession to a crime or information thereon comprises the two following component elements:

(a) The physical element: The Jordanian legislature used the verb "inflict", which implies excessive force involving harsh treatment in the form of violent behaviour towards the victim in such a way as to cause him pain and suffering. This means that the harsh treatment required to constitute the physical element must be directed against the victim's body. There is nothing in the text to indicate that the harsh treatment may take the form of mental torture through the commission of humiliating acts that inflict severe suffering on the offender and induce him to confess to a crime or provide information thereon under the influence of mental torture. Logically, the physical element of this crime must be based on an act of physical or mental violence or harsh treatment such as, for example, the commission of acts of

violence against a person other than the victim, such as his child or his wife, which places him under tremendous psychological pressure that induces him to confess to an offence or provide information thereon;

(b) The mental element: The intention of the person using harsh treatment against the victim must be to obtain a confession to an offence or information thereon. If that is not his intention, his actions merely constitute an offence of wilful assault. However, if that is his intention, the question of whether he actually obtains a confession to an offence or information thereon is irrelevant for the constitution of the mental element. Accordingly, we find that this crime is constituted through the existence of a general intention, namely the desire to inflict harm and use violence and harsh treatment with a view to the achievement of the perpetrator's objective. In addition to this general intention, it also requires a special intention in so far as the purpose of the acts of violence and harsh treatment must be to obtain the victim's confession to an offence or information thereon. The perpetrator must also be aware of the unlawfulness of his behaviour, since criminal intent can be established only by proving such awareness and the existence of a desire to achieve the objective.

50. With regard to the criminal penalty, anyone who commits the offence of using violence or harsh treatment with a view to obtaining a confession to an offence or information thereon is liable to imprisonment for a period of three months to three years, as prescribed in article 208, paragraph 1, of the Penal Code. Paragraph 2 of that article makes provision for an aggravating circumstance that increases the minimum penalty to imprisonment for a period of six months to three years if the acts of violence or harsh treatment cause the victim to suffer illness or physical injury. If the consequences of the act are more serious and the victim is inflicted with a permanent disability as a result of the violence used against him, the perpetrator is subject to the provisions of article 335 under which the deliberate infliction of harm that leads to a permanent disability is designated as a criminal offence. If the victim dies as a result of such acts of violence or harsh treatment, their perpetrator is subject to the provisions concerning the offence of wilful homicide, as set forth in article 208 of the Penal Code which provides for the imposition of the above-mentioned penalties and, in addition, allows scope for the imposition of any other penalty warranted by the acts of violence.

51. It would be inappropriate to include the crime of torture on grounds of suspicion within this context since, in accordance with article 99 of the Code of Criminal Procedure, a criminal investigation officer who suspects a person and is satisfied that he has sufficient evidence on which to charge him has an obligation to arrest the said person and immediately hear his statements. If he is not satisfied with the said statements, he must send the said person, within 48 hours, to the competent public prosecutor, who must interrogate him within 24 hours and then order his release or his remand in custody. If the criminal investigation officer does not find adequate evidence on which to prefer charges, he has no right to arrest the said person. If he does so, he is regarded as having committed the offence of deprivation of personal liberty.

52. Jordanian criminal law makes no provision for the crime of torture in the form of any type of discrimination. However, it can be said that any type of

discrimination is regarded as contrary to the Jordanian Constitution, which stipulates that Jordanians are equal, without any discrimination between them on grounds of race, language or religion (art. 6 of the Constitution).

53. Although, as already indicated, acts of torture are designated as criminal offences, there are some practices which, while involving an encroachment on liberty, are regarded as lawful penalties. The most outstanding example of this can be found in the Jordanian Prisons Act No. 23 of 1953, articles 38 and 39 of which prescribe corporal punishment if the contravention involves disobedience, attempted disobedience or the use of violence against any person. Such punishment takes the form of confinement in a cell, with or without punitive rations, for a period not exceeding 14 days, or with reduced rations for a period not exceeding 28 days, or the forfeiture of up to 28 days from any reduction of sentence.

54. The imposition of corporal punishment is subject to the following conditions:

(a) The period of confinement in the cell must not exceed seven days;

(b) If the guilty party is sentenced to punitive rations for a period exceeding four days, this penalty must not be imposed for more than three consecutive days and there must be a three-day interval before the remainder of the penalty is imposed;

(c) A prisoner must not be subjected to punishment until he has been given an opportunity to hear the charge and the evidence against him and to defend himself;

(d) A sentence of corporal punishment must be confined to a single flogging with a rod or another instrument approved by the Minister of Defence. The number of strokes, up to a maximum of 24, must be specified in the sentence and every sentence involving corporal punishment is subject to the above-mentioned approval;

(e) Corporal punishment may not be inflicted on any of the following persons:

(i) Females;

(ii) Males who have been sentenced to death;

(iii) Males over 45 years of age.

55. With regard to the attempted commission of this crime, article 68 of the Jordanian Penal Code, which constitutes a general rule applicable to the attempted commission of all offences, defines the attempted commission of a criminal act as meaning commencement of the performance of an evident act leading to the commission of a felony or a misdemeanour. In other words, the attempted commission of an offence occurs when the offender begins to perform an evident act leading to the commission of the offence.

56. With regard to criminal conspiracy, acts of complicity involving the instigation of, or participation in, an offence are punishable under Jordanian criminal law. Article 7 of the Jordanian Penal Code stipulates that, if a number of persons acting in association commit a felony or a misdemeanour, or if the felony or misdemeanour consists in a number of acts constituting component elements conducive to the occurrence of the felony or misdemeanour, they are all regarded as accomplices therein and each of them is liable to the penalty prescribed therefor in the said Code in the same way as if he had acted independently. Moreover, the Code distinguishes between the penalty for incitement and the penalty for the commission of a criminal act.

57. It should be noted that Jordanian law does not permit acts of torture in exceptional circumstances or during states of emergency or political instability, which are not regarded as justifying the practice of torture or any other form of cruel treatment.

58. In addition to the above, the Jordanian Constitution prohibits any discrimination between individuals by emphasizing the principle of equality before the law. Accordingly, any violation of this general principle constitutes a breach not only of the law but also of the Constitution. Moreover, if acts of violence or torture are motivated by discrimination, such acts constitute punishable offences.

59. Jordanian criminal law prohibits all ways and means of obtaining information or confessions that are prejudicial to physical integrity. Methods of investigation that involve duplicity, coercion, intimidation, the use of narcotic drugs, lie-detectors or recourse to solitary confinement, electric shocks or other forms of cruel treatment are prohibited by Jordanian law and any investigatory procedure based thereon is null and void.

60. A sentence of corporal punishment can be carried out only in the presence of the medical officer, after he has examined the prisoner and certified that his state of health will enable him to endure the corporal punishment. The medical officer also has the right to halt the infliction of the remaining penalty at any time.

Action and measures taken

61. The principal measures taken by the Government within the context of its endeavours to protect human rights and eliminate torture can be said to consist in the following:

(a) The establishment of a Centre for Freedoms and Human Rights in the Arab World;

(b) Designation of the Investigation and Detention Centre at the General Intelligence Agency as a prison with effect from 1 November 1993;

(c) The conversion of Irbid Prison into a national museum;

(d) The abolition of martial law with effect from 1992 on the basis of the Royal Decree approving the decision by the Council of Ministers to declare martial law abolished;

(e) The promulgation of the Defence Act No. 13 of 1992, based on the provisions of article 124 of the Constitution, which was published in the Official Gazette and superseded the previous Act of 1935 together with all the regulations promulgated thereunder. This Act is applied whenever there is a need to defend the country and in the event of an emergency that threatens national security or public safety in one or more regions of the Kingdom due to the outbreak or threatened outbreak of war or the occurrence of internal civil strife or general disasters (art. 2 of the Defence Act).

62. In this connection, it should be noted that any person who is detained or arrested under the terms of this Act or any defence order or who is subjected to seizure or sequestration of his assets or of assets in his custody, or any interested party acting on behalf of the said person, has a right to lodge an appeal with the Supreme Court against the seizure or sequestration order. The Court must issue a ruling on the appeal as rapidly as possible and its rejection of the appeal does not preclude the lodging of new appeals as long as the contested order remains in force.

63. It is noteworthy that the new Act makes no provision for any of the derogations included in the old Act.

Extradition of criminals

64. In Jordan, the question of the extradition of criminals in general is governed by the Extradition of Fugitive Criminals Act of 1927 and the bilateral agreements concluded by the Jordanian Government. This question is clarified in the following paragraphs.

65. An extraditable offence is deemed to be an offence punishable under Jordanian law in the same way as if it were committed in Jordanian territory, provided that it is included in the schedule of extraditable offences, regardless of the designation applied to the offence under the legislation in force in the Kingdom. However, H.M. the King is empowered to add to the schedule any offence not already included therein, or remove any offence therefrom, by promulgating an announcement to that effect which must be published in the Official Gazette. It is noteworthy that a fugitive criminal is deemed to be any person who is suspected or convicted in a foreign country of an extraditable offence and who is living or believed to be living in Jordan or en route therefor. The expression "fugitive criminal from a foreign country" means any criminal or person convicted of the commission of an extraditable offence in the foreign country concerned.

66. With regard to the extradition of criminals, the following should be noted:

67. A fugitive criminal cannot be extradited if the offence for which his extradition is requested is of a political or military nature and if the magistrate before whom the criminal is brought or the court of appeal or

H.M. the King is convinced that the purpose of the extradition request is to put the said criminal on trial or punish him for the political offence in question.

68. A fugitive criminal cannot be extradited to a foreign State unless the law of the said State or the agreement concluded with it stipulates that a criminal cannot be detained or tried for an offence, committed in the territory of that State prior to his extradition, other than the offence specified in the extradition request and forming the basis for approval of the extradition unless he is returned to Jordan or given an opportunity to return thereto.

69. A fugitive criminal cannot be extradited until 15 days after the date of his arrest pending extradition.

70. Any fugitive criminal who is a national of a foreign State living or believed to be living in Jordan is liable to be arrested and extradited in the manner provided for in this Act in the cases in which this Act applies to extradition requests submitted by the said State.

71. Requests for the extradition of fugitive criminals who are nationals of a foreign State living or believed to be living in Jordan must be submitted through diplomatic channels by the State requesting the extradition. The file concerning the extradition of the wanted person must contain all the papers and evidence on which the State bases its request for extradition, since the offence with which the said person is charged must be punishable, under the laws of both States, by a term of not less than one year's imprisonment and the accused person must have been sentenced to a term of more than three months' imprisonment. This file must be transmitted to H.M. the King, who may instruct a magistrate to issue a warrant for the criminal's arrest in accordance with the request submitted to him. The request for extradition is then considered by three levels of court (a conciliation court, a court of appeal and the Court of Cassation) in order to ensure that the rights of the accused person whose extradition has been requested are safeguarded to the maximum extent.

72. If the competent magistrate issues a warrant for the arrest of the criminal under the terms of this article without being so instructed by H.M. the King, he must immediately submit a report on the circumstances to His Majesty, together with the details, information or complaint received or a certified copy thereof. If he deems fit, H.M. the King may then countermand the arrest warrant and order the release of the person who was arrested. The competent magistrate must release the fugitive criminal who was arrested without an order to that effect from H.M. the King unless otherwise ordered by His Majesty (within a reasonable period of time set by the magistrate in accordance with the circumstances of the case) in a communication informing him that he has received a request for the extradition of the criminal in question.

73. If the fugitive criminal is arrested under the terms of a warrant, he is brought before a magistrate (not necessarily the one who issued the arrest warrant) who hears the charge (if possible, with the same degree of competence and in the same manner as that which would be followed if the magistrate were

a public prosecutor or an examining magistrate interviewing a person accused of the commission of an offence in Jordan). The competent magistrate must hear all the evidence indicating whether the offence (in respect of which the detainee was accused or sentenced) was of a political nature or constituted a non-extraditable offence. The magistrate must order the arrest of the fugitive criminal accused of the commission of an extraditable offence, provided that the arrest warrant issued by the foreign State was duly certified and showed the evidence which, with due regard for the provisions of this Act, would permit the trial of the accused under the provisions of the legislation in force in Jordan if the accused had committed the said offence therein, failing which the magistrate must order his release. At all events, the arrest or release warrant is subject to appeal within 15 days from the date of its issue and is also subject to cassation within the same period beginning from the time at which the decision on the appeal is made known or notified in accordance with the rules laid down in the Code of Criminal Procedure.

74. When ordering the criminal's detention, the magistrate must send him to a prison or detention centre in Jordan where he is held until H.M. the King orders his extradition. The magistrate must immediately transmit to H.M. the King a certificate to the effect that the criminal in question has been detained, together with a report on the case, as he deems appropriate.

75. When the competent magistrate orders the detention of the fugitive criminal, he must inform him that he can be extradited only after 15 days have passed, during which he has the right to request a review of the case by the Court of Appeal. On the expiration of the said period, or after the court of appeal has issued a ruling in the matter of the extradition request placed before it, H.M. the King has the right to order the hand-over of the said criminal to the person whom the Government requesting the extradition has delegated to take charge of him.

76. If, after being detained, the fugitive criminal is not extradited or transferred outside Jordan within two months from the date of his detention or after the decision by the court of appeal assigned to hear his case (if an appeal is lodged therein), the court of appeal has the right to order his release, at his request or at the request of his legal counsel, once it has been established that H.M. the King has been informed of the criminal's intention to lodge such an appeal within a reasonable period of time failing any indication to the contrary.

77. If the arrest warrants issued by the Government of the foreign country, as well as the statements and testimonies given under oath in that country or copies thereof and the judicial certificates and documents substantiating the conviction, are certified in accordance with a legal provision or issued in the manner specified below, they are deemed to be duly certified in such a way as to ensure achievement of the aim of this Act:

(a) If the arrest warrant is signed by a judge, a magistrate or an official of the foreign Government in which it was issued;

(b) If the statements and testimonies, or copies thereof, are certified and signed by a judge, a magistrate or an official of the Government of the foreign country from which they were taken and if that certification indicates that they are true copies of the same original statements and testimonies, as required;

(c) If the certificate of conviction or the judicial documents substantiating the conviction are signed by a judge, a magistrate or an official of the Government of the foreign country in which the criminal was convicted and if the validity of the arrest warrants, as well as the statements and testimonies, or copies thereof, and the certificates of conviction or the judicial documents substantiating the conviction, is attested, under oath, by a witness or by the seal of a Minister of that State, the Jordanian courts respect that official seal and accept all the documents certified in this manner as evidence that does not require further proof.

78. The following provisions apply if the offence for which the fugitive criminal's extradition is requested was committed on the high seas on board a ship heading for any Jordanian port:

(a) The criminal may be detained in a prison or confined in a detention centre in which the authority ordering the detention is empowered to confine persons suspected of committing such offences;

(b) If the fugitive criminal is arrested under the terms of a warrant issued without a Royal Decree signed by H.M. the King, he is brought before the magistrate who issued the arrest warrant, or before the magistrate exercising jurisdiction over the port in which the ship is anchored or the place closest to that port, who is empowered to order the criminal's appearance before him in the manner prescribed in article 10 of this Act.

Safeguards

79. The Jordanian Constitution specifies the essential pillars on which liberty of person is based: the right of every individual to security, inviolability of his home and protection of his privacy. In this connection, we wish to state that, from the outset, the Jordanian legislature has regarded the unlawful arrest or detention of any person as a legally punishable offence and has therefore established safeguards concerning the duration of custody and the types of offences in which it is permissible. The legislature has also established the principles and rights of defence during custody and interrogation, as will be seen below.

80. According to the Code of Criminal Procedure, a public prosecutor is a public official who is responsible for the conduct of public prosecutions before courts of first instance and conciliation courts within his area of jurisdiction. In addition to his task of investigating crimes and tracking down their perpetrators in his capacity as a criminal investigation officer, he is empowered to receive complaints and information concerning criminal activities. He also acts as an examining magistrate competent to investigate misdemeanours or felonies. In cases involving misdemeanours, he is empowered to take the investigatory steps needed for the purposes of criminal prosecution, as specified in article 43 of the Code of Criminal Procedure

which stipulates that, if the public prosecutor comes to know, through an informant or in any other way, that a felony or a misdemeanour has occurred in his area, or if he learns that the person suspected of committing a felony or a misdemeanour is living in his area, he must investigate the matter and, if necessary, proceed in person to the place of the incident in order to prepare the requisite reports thereon as stipulated in the section of the Code concerning investigations. These procedures are detailed in articles 52-111 of Section I, Chapter Four, of the Code of Criminal Procedure.

81. In his capacity as a first-level investigating authority, in cases involving felonies and misdemeanours the public prosecutor is empowered to take numerous judicial decisions including, in particular, the issue of summons and warrants (art. 11 of the Code of Criminal Procedure). One of the most important of these decisions is his power to issue orders for remand in custody, as explicitly provided for in article 111 of the Code of Criminal Procedure which stipulates that, in cases involving felonies and misdemeanours, the public prosecutor is empowered to issue summonses which, after questioning the accused, he may replace with orders for their remand in custody if the investigations so require.

82. He may extend the validity of these orders, at his discretion, in the manner specified in article 114 of the Code of Criminal Procedure which stipulates that, after questioning the accused, the public prosecutor may issue an order for his remand in custody for a period not exceeding 15 days if the offence with which the accused is charged is punishable by imprisonment or a more severe penalty. If necessary, the public prosecutor may extend the validity of the order for successive periods of up to 15 days. In accordance with the aforementioned provision, in his capacity as an examining authority at the preliminary level of investigation, the public prosecutor is empowered to issue an order for the remand in custody of the accused, regardless of whether he is charged with a felony or a misdemeanour, as long as the charge involves an offence in which remand in custody is permissible in accordance with the legally specified conditions and circumstances.

83. It is noteworthy that, in cases involving misdemeanours, the public prosecutor may rescind an order for remand in custody that he has issued and release the accused on bail (art. 121 of the Jordanian Code of Criminal Procedure). However, in cases involving felonies punishable by a fixed term of penal servitude or a fixed term of detention, an accused person remanded in custody can be released only by order of the court to which the case has been referred (art. 123, para. 2). In cases involving other types of felonies, the accused person cannot be released if he has been charged with, or convicted or, an offence punishable by death, penal servitude for life or life imprisonment (art. 123, para. 1, of the Code of Criminal Procedure).

84. The Attorney-General, who constitutes the second level of examining authority, represents the Department of Public Prosecutions in every court of appeal in Jordan and supervises the work of the public prosecutors and all criminal investigation officers (art. 113 of the Code of Criminal Procedure).

85. The Code of Criminal Procedure vests the Attorney-General with numerous powers. He is the authority competent to monitor the legality of the investigations conducted by the public prosecutor, as well as the judicial

decisions taken by the latter during the course of legal proceedings (for example, art. 130 of the Code). He is also the sole authority competent to issue an indictment order against persons accused of felonies and refer them to the criminal courts. In fact, persons so charged can be referred to the competent criminal court only on the basis of an indictment order issued by the Attorney-General (art. 206 of the Code). Accordingly, the Attorney-General constitutes the second level of investigating authority in cases involving felonies in which, by law, investigations must be conducted at two levels. If the public prosecutor finds that the charge under consideration should be classified as a felony, he must refer the case file to the Attorney-General who, if he approves such classification of the charge, indicts the accused and refers him to the competent criminal court.

86. The legal status of the Attorney-General under Jordanian law is defined in the provisions of articles 130 and 133 of the Code of Criminal Procedure. Article 130, paragraph 3, stipulates that, if the Attorney-General finds that the public prosecutor's decision not to prosecute an accused person under the terms of article 130, paragraph 1, is inappropriate, he must countermand it and proceed as follows: if he finds that the offence constitutes a felony, he must indict the person accused thereof and return the case file to the public prosecutor so that it can be submitted to the competent court.

87. Article 133, paragraphs 1 and 2, of the Code of Criminal Procedure stipulate that, if the public prosecutor finds that the offence constitutes a felony and that there is sufficient evidence to put the accused on trial, he must recommend that the accused be tried on that charge before the competent criminal court and must send the case file to the Attorney-General.

88. Paragraph 2 stipulates that, if the Attorney-General approves the recommendation, he must indict the person accused on that charge and return the case file to the public prosecutor so that he can submit it to the competent court. Under the terms of paragraph 4 of the said article, the Attorney-General is empowered to reject the recommendation initially made by the public prosecutor, concerning offences which he regards as constituting felonies, and the Attorney-General may take a decision contrary to the opinion held by the public prosecutor by, for example, deciding not to prosecute the accused. In accordance with paragraph 5 of the said article, he may also classify the offence, contrary to the public prosecutor's opinion, as a misdemeanour rather than a felony and countermand the public prosecutor's decision to refer it to the competent court.

Temporary remand in custody

89. Since remand in custody is compulsory under Jordanian law in cases involving felonies (art. 123, para. 1, of the Code of Criminal Procedure), orders for remand in custody issued by the public prosecutor in such cases are considered by the Attorney-General during the discharge of his judicial duty of monitoring the legality of investigations conducted by the public prosecutor. This is explicitly stated in article 134 of the Jordanian Code of Criminal Procedure, which stipulates that an order for the remand in custody of the accused remains in force until the Attorney-General makes known his decision in the case. If he decides that the accused should be indicted or put on trial, the order remains in force until the accused has been duly tried

or released. In such cases, only the court to which the accused is referred is competent to order his release (art. 123, para. 1, of the Code of Criminal Procedure).

90. Remand in custody is not permissible in cases involving contraventions and is optional in cases involving misdemeanours and felonies. This is the customary practice under Jordanian criminal law (art. 111 of the Code of Criminal Procedure).

(a) In cases involving misdemeanours punishable by imprisonment for a period ranging from one week to three years, the public prosecutor, in his capacity as the magistrate competent to conduct the preliminary investigation, may, if necessary, order the remand in custody of the person whom he is questioning at any stage of the investigation (arts. 111-114 of the Code of Criminal Procedure). Under Jordanian law, such an order does not need to be substantiated by the public prosecutor since it is monitored by the Attorney-General and the Court of Cassation.

(b) With regard to cases involving felonies, in view of the extremely grave nature of such offences, the conditions regulating the remand in custody of the accused are less strict than in cases involving misdemeanours. Accordingly, criminal law does not place any restriction on the power of the judge to order remand in custody and allows him full scope to decide whether such an order should be issued (art. 114 of the Code of Criminal Procedure).

Duration of temporary remand in custody

91. Jordanian criminal law does not make any distinction on the basis of whether such a step is taken in cases involving misdemeanours or felonies. Article 114 of the Code of Criminal Procedure stipulates that, after questioning the accused, the public prosecutor may order his remand in custody for a period not exceeding 15 days if he is charged with an offence punishable by imprisonment or a more severe penalty and, if necessary, this period may be extended for further periods of up to 15 days.

92. In this connection, it should be noted that, in accordance with the Code of Criminal Procedure, there are two methods by which temporary remand in custody can be terminated in cases involving misdemeanours. The public prosecutor may revoke his order for remand in custody on the condition that the accused specifies his place of residence within the public prosecutor's area of jurisdiction so that notice of all the investigation procedures can be served on him at that address. Alternatively, the accused person may apply for the lifting of the remand order at any stage of the proceedings and, if the public prosector rejects his application, he may lodge an appeal with a court of first instance (art. 121 of the Code of Criminal Procedure).

93. With regard to cases involving felonies, the Code of Criminal Procedure makes no provision for the release from custody of a person accused of such offences. However, article 123 of the Code prohibits the release of any person charged with an offence punishable by death, penal servitude for life or life imprisonment. This implies that any person accused of the commission of an offence not punishable by any of the above-mentioned penalties could be released (arts. 114 and 121 of the Code of Criminal Procedure). In our view,

this strictness concerning the remand in custody of persons accused of the commission of felonies does not entail any violation of human rights, particularly in view of the extreme gravity of the charges brought against them.

94. It is noteworthy that the completion of the preliminary investigation might lead to the lifting of the order for temporary remand in custody if, for any reason, the case is not referred to the competent court or if the charges brought against the accused are deemed to constitute a misdemeanour. Furthermore, the defendant might not be convicted by the court hearing the criminal case in respect of which he was remanded in custody and he would consequently be acquitted under the terms of a final judgement.

Penalty for non-observance of the legal rules governing remand in custody

95. The Jordanian Penal Code, like other penal legislation, prescribes the penalty for remanding a person in custody in circumstances other than those provided for by law. Article 178 of the Code stipulates that: "Any official who arrests or imprisons a person in circumstances other than those provided for by law shall be punished by imprisonment for a period of three months to one year". Article 179 of the same Code further stipulates that: "Any warden or guard of a prison or a correctional or reform institution, or any official assuming their functions, who admits a person without a legal warrant or court order, or who detains a person for longer than the prescribed term, shall be punished by imprisonment for a period of one month to one year". The extent to which Jordanian legislation protects liberty of person from unjustified remand in custody is evident from the text of article 108 of the Code of Criminal Procedure, which stipulates that: "Anyone who knows of a person who is detained or imprisoned in an unlawful manner, or at a place that is not intended to be used for purposes of detention or imprisonment, must notify a member of the Department of Public Prosecutions, who must go immediately to the place in which the person concerned is being detained or imprisoned, where he shall conduct an investigation and order the release of the person who is thus being detained or imprisoned unlawfully. He must also draw up a full report in this connection. If he neglects to do so, he shall be considered an accomplice to the offence of deprivation of personal liberty and shall be prosecuted as such".

96. Article 37 of the Public Security Act No. 38 of 1965 stipulates that any policeman who exercises his authority in an unlawful manner that causes harm to any person or to the State shall be deemed to have committed a contravention punishable by reduction in rank, forfeiture of salary for a period of up to two months, or imprisonment or detention for a period of up to two months.

97. In view of the highly detrimental effect that the subjection of an unconvicted accused person to remand in custody would have on his personal freedom, articles 111 and 114 of the Code of Criminal Procedure stipulate that the accused must be questioned before being remanded in custody. According to article 111, in cases involving felonies or misdemeanours, the public prosecutor may simply issue a summons which, after questioning the accused, he may replace with an order for remand in custody.

98. This applies regardless of whether the authority empowered to conduct an investigation and order remand in custody is the public prosecutor or a justice of the peace. The Jordanian Court of Cassation has ruled that a justice of the peace is not empowered to remand an accused person in custody before he has been questioned, since the statutes of conciliation courts stipulate that, in penal proceedings, a justice of the peace must act in accordance with the provisions of the Code of Criminal Procedure unless otherwise specified in the statutes. Likewise, the Code of Criminal Procedure does not empower a public prosecutor to remand an accused person in custody before he has been questioned.

99. The Jordanian Code of Criminal Procedure does not contain any provision under which an accused person must be remanded in custody immediately after he has been questioned, since an order for his remand in custody may be issued at any time after he has been questioned, regardless of whether the intervening period is long or short.

100. With regard to the safeguards concerning questioning: under Jordanian law, questioning is subject to certain safeguards, the most important of which consists in the fact that only an investigating authority is empowered to question an accused person, whose lawyer must be invited to be present during such questioning. There is no stipulation to the effect that the lawyer must be notified of the investigation before his client is questioned. This matter is reviewed in the following paragraphs.

1. Only the investigating authority is empowered to question the accused.

101. According to the Jordanian Code of Criminal Procedure, only the authority conducting the preliminary investigation is empowered to question the accused. If other persons, such as members of the Criminal Investigation Department, are assigned to the case, their assignment does not empower them to question the accused. This is stipulated in numerous articles of the Code of Criminal Procedure. For example, article 92 stipulates that: "The public prosecutor may assign a member of the Criminal Investigation Department to carry out any investigatory task with the exception of the questioning of the accused". The same stipulation is found in article 48 of the Code, concerning the assignment of a member of the Criminal Investigation Department to investigate an offence committed in public or in private, which reads as follows: "During the discharge of his duties, as specified in articles 42 and 49, the public prosecutor may, if he sees fit, assign the head of a police or gendarmerie post to carry out any of the tasks falling within the scope of his functions, with the exception of the questioning of the accused".

102. In cases of flagrante delicto, the investigating authority must question the accused immediately (art. 37 of the Code of Criminal Procedure). In other cases, the public prosecutor questions the accused as soon as he appears before him in response to a summons. Accused persons against whom an arrest warrant has been issued are questioned within 24 hours, during which period they are held in custody (art. 112, para. 2, of the Code of Criminal Procedure). If the accused has not been questioned before the expiration of the 24-hour time-limit, the official in charge of the place of detention in which he is being held in custody automatically sends him to the public

prosecutor for questioning. If an accused person who has been arrested under the terms of a warrant remains in the detention centre for more than 24 hours without being questioned or brought before the public prosecutor, his remand in custody is deemed to be an arbitrary act and the person responsible therefor is prosecuted for the offence of deprivation of personal liberty, as stipulated in article 113 of the Code of Criminal.

2. The lawyer of the accused must be invited to be present before the latter is questioned.

103. This safeguard is provided for in article 63, paragraph 1, of the Jordanian Code of Criminal Procedure, which stipulates as follows: "When the accused appears before him, the public prosecutor shall verify his identity, read out the charge brought against him and ask him to reply thereto, warning him that he has the right to refuse to reply unless his lawyer is present. This warning shall be noted in the investigation report and, if the accused refuses to appoint a lawyer, or if a lawyer does not appear with him within 24 hours, the investigation shall proceed without the lawyer".

104. The application of the above-mentioned safeguard is restricted by article 65, paragraph 1, of the Code of Criminal Procedure, which reads as follows: "When appearing before the public prosecutor, neither of the opposing parties may avail himself of the services of more than one lawyer". According to paragraph 2: "The lawyer shall not have the right to speak during the examination except with the permission of the examining authority. However, if he is not permitted to speak, this fact must be noted in the record". Article 63, paragraph 2, stipulates that: "If rapid action is required for fear that evidence might be lost, the accused may be questioned before his lawyer is invited to be present, on the understanding that the lawyer may demand to see the statement made by his client after he has been questioned".

105. The rulings of the Jordanian Court of Cassation show due regard for this safeguard. One of its rulings states as follows: "Failure by the public prosecutor to warn the accused that he has the right to refuse to reply to the charge unless a lawyer is present, or failure to note the said warning in the investigation report, shall constitute a breach of the law". In such a case, any statement made by the accused is deemed to be null and void on the ground of the public prosecutor's violation of one of the legally prescribed safeguards for the defence of the accused. In regard to the above-mentioned restrictions, the Court of Cassation has ruled as follows: "Article 63 of the Code of Criminal Procedure does not place the public prosecutor under an obligation, in every case, to warn the accused that he has the right to refuse to reply unless a lawyer is present during the examination. When urgent action is required for fear that evidence might be lost, paragraph 2 of that article empowers the public prosecutor to question the accused before his lawyer is invited to be present".

Worldwide jurisdiction

106. The provisions of the Jordanian Penal Code regulate the scope of its application. It contains provisions that apply to anyone who commits within the Kingdom any of the offences referred to in the Code. An offence is deemed

to have been committed within the Kingdom if any of the elements constituting the offence or any of the acts that cannot be dissociated from the offence or any principal or secondary act of complicity occur in the territory of the Kingdom. The territory of the Kingdom includes the atmospheric layer covering it, its territorial waters to a distance of 5 km from the coast, the air space above the territorial waters, and Jordanian ships and hovercraft.

107. However, the provisions of the Code do not apply to offences committed in Jordanian territorial waters on board a foreign hovercraft if the offence does not extend beyond the edge of the craft. Nevertheless, offences that do not extend beyond the edge of the hovercraft are subject to Jordanian law if the perpetrator or the victim is Jordanian or if the hovercraft makes a stop in the Hashemite Kingdom of Jordan after the commission of the offence. Furthermore, the provisions of the Code do not apply to offences committed in Jordanian territorial waters, or in the air space above them, on board a foreign ship or hovercraft if the offence does not extend beyond the edge of the ship or hovercraft.

108. The provisions of the Code do apply to any Jordanian who commits or aids and abets in the commission of a felony or misdemeanour involving torture outside the Kingdom. Its provisions also apply to such persons even if they forfeit or acquire Jordanian nationality after the commission of the felony or misdemeanour.

109. Article 10, paragraph 4, of the Penal Code stipulates that the provisions of the Code apply to any foreigner residing in the Hashemite Kingdom of Jordan who commits or aids and abets in the commission, outside the Hashemite Kingdom of Jordan, of a felony or misdemeanour punishable under Jordanian law if his extradition is not applied for or accepted.

110. It is clear from the above texts that the provisions of the Jordanian Penal Code apply to any offence constituting a felony or a misdemeanour the perpetrator of which is arrested in Jordanian territory, regardless of the territory in which the offence is committed and regardless of the nationality of its perpetrator. In accordance with this principle, the provisions of the Penal Code have wide scope covering the entire world. The Jordanian legislature adopted this modern principle on the basis of the concept of international solidarity in the fight against crime in cases in which a criminal is not prosecuted before his natural judge.

111. The universality of the provisions of the Code is subject to the following requirements:

(a) The offender must be a foreigner;

(b) He must have committed, in foreign territory, an act constituting a felony or a misdemeanour under the terms of the Jordanian Penal Code. It is noteworthy that the Code does not stipulate that the act must be punishable in the State in which it is committed, since it is usually punishable in another State, otherwise there would be no reason for the latter to request extradition. This stipulation is therefore self-evident, in addition to what we have already said concerning a person's non-answerability for an act unless

it is prohibited under the law of the State in which he is residing and not the State to which he belongs. In matters on which the law is silent, there is no scope for discretionary interpretation;

(c) The Code stipulates that the offender must be resident in the Kingdom, i.e. he must be legally domiciled in Jordan;

(d) The Code stipulates that, for this jurisdiction to be effective, the foreigner's extradition must not have been applied for or accepted. If a foreigner can be punished in accordance with the principle of territoriality, identity or personality, there is no reason to insist on the application of Jordanian law in accordance with the principle of universality. Because of this condition, that principle is of a precautionary nature and is resorted to only in two cases, namely the failure of a State to request extradition or the rejection of such a request by Jordan, as in the case of political or military refugees. If all these conditions are met, the provisions of the Jordanian Penal Code apply, regardless of the apparent extent of the offender's liability arising from his commission of the offence or his aiding and abetting therein.

Procedures and safeguards

112. The principles governing the detention of suspects and the safeguards applicable in this respect are set forth in the provisions of the Jordanian Code of Criminal Procedure.

113. Any criminal investigation officer is empowered to arrest a suspect who is present and against whom there is sufficient evidence to bring a charge in the following cases:

(a) In cases involving felonies;

(b) In cases involving misdemeanours, where the offenders are caught in flagrante delicto, if such offences are legally punishable by a term of up to six months' imprisonment;

(c) If the offence constitutes a misdemeanour punishable by detention and the accused is already under police surveillance or does not have a known place of fixed domicile in the Kingdom.

114. The criminal investigation officer must immediately listen to the statements of the accused person whom he arrests and, if he is not satisfied therewith, must send him within 48 hours to the competent public prosecutor, who must question him within 24 hours and then order his release or his remand in custody.

115. When the accused appears before the public prosecutor, the latter must verify his identity, acquaint him with the charge brought against him and ask him to reply thereto, warning him that he has the right to refuse to reply unless a lawyer is present. This warning is noted in the investigation report and, if the accused refuses to appoint a lawyer, or if his lawyer does not

appear within 24 hours, the investigation proceeds without the lawyer. However, when rapid action is needed for fear that evidence might be lost, the accused may be questioned before his lawyer is invited to attend, on the understanding that his lawyer has the right to see the statement made by his client after he has been questioned. This safeguard is further strengthened by the fact that the accused and his lawyer have the right to be present during all the investigation proceedings, with the exception of the hearing of testimony from witnesses, and they are entitled to be acquainted with the results of the investigations that are conducted in their absence.

116. No one may be arrested or detained except by order of the authorities legally competent to do so. This safeguard is provided for in article 108 of the Code of Criminal Procedure, which stipulates that anyone who knows of a person who is detained or imprisoned in an unlawful manner, or at a place that is not intended to be used for purposes of detention or imprisonment, must notify a member of the Department of Public Prosecutions, who must go immediately to the place in which the person concerned is being detained or imprisoned, where he must conduct an investigation and order the release of the person who is thus being detained or imprisoned unlawfully. If he neglects to do so, he is liable to the penalty for deprivation of liberty.

117. Every official authority or public official who, during the discharge of his duty, learns of the commission of a felony or a misdemeanour must immediately inform the competent public prosecutor and transmit to him all the information, reports and documents concerning the offence (art. 250 of the Code of Criminal Procedure). Likewise, anyone who witnesses a breach of public security or an act of aggression against the life or property of any person must inform the competent public prosecutor (art. 28). Anyone who, in any other circumstances, learns of the commission of an offence also has an obligation to notify the public prosecutor thereof (art. 26, para. 2).

118. If a punishable criminal offence is committed in public, the public prosecutor must proceed immediately to the place at which it occurred. An offence committed in public is deemed to be an offence observed by one or more witnesses during or on the completion of its commission. This concept also includes offences whose perpetrators are apprehended following a hue and cry after their commission or in which, within 24 hours from the time of commission of the offence, the perpetrators are found to be in possession of items, weapons or papers from which it can be inferred that they were the perpetrators of the said offences or if, during that period, clues or information are found from which such can be inferred.

119. When the public prosecutor arrives at the scene of the alleged offence, he must draw up a report containing his observations and any other information that might further the investigation.

120. In the case of punishable criminal offences committed in public, the public prosecutor may order the arrest of any person present if there is a strong presumption that he is the perpetrator of the offence. If such person is not present, the public prosecutor issues a warrant for his arrest and

subsequently questions the person when he is brought before him. The public prosecutor may avail himself of the services of a medical practitioner if the consequence of the act is murder for unknown reasons that give rise to suspicion.

121. Criminal investigation officers who learn of the commission of a serious offence must also immediately notify the public prosecutor.

Complaints by victims

122. Under Jordanian law, the victim of a felony or misdemeanour involving torture has the right to lodge a civil complaint with the public prosecutor or the competent court. However, the complainant is not regarded as a civil party unless he explicitly designates himself as such in the complaint, or expresses his wish to be regarded as such in a subsequent written request, before the pronouncement of judgement and payment of the legal fees in respect of any compensation that might be claimed.

123. Submission of a complaint by a victim of torture is facilitated by the fact that he is exempted from payment of legal fees and costs. The complainant is entitled to bring a civil action at any stage of the proceedings until the conclusion of the hearing before a court of first instance and may pursue his claim further even after the judgement has been handed down.

124. Furthermore, under the Code of Criminal Procedure, any public authority or official who, during the discharge of his duty, learns of the commission of a felony or a misdemeanour has an obligation to inform the competent public prosecutor and to transmit to him all the information, reports and documents concerning the offence. In addition, anyone who witnesses a breach of public security or an act of aggression against the life of any person must duly notify the public prosecutor. Likewise, anyone who, in any other circumstances, learns of the commission of an offence has an obligation to duly inform the public prosecutor.

Compensation for victims of torture

125. It is noteworthy that Jordanian criminal law contains no provision to the effect that a victim of torture is entitled to receive compensation in respect thereof. However, in view of the penalties to which any law-enforcement official is liable if he violates the provisions of the law, and in view of the provisions of Jordanian civil law under which any injured party is entitled to compensation, a victim of torture can lodge a complaint, in accordance with the general principles of the law, and claim compensation in respect of the detriment suffered by bringing an action before the courts with a view to ensuring punishment of the guilty party and the award of appropriate compensation assessed by the court.

126. It is also noteworthy that Jordan applies the Standard Minimum Rules for the Treatment of Prisoners and its prisons are open for annual inspection by delegations from Amnesty International and the International Red Cross.

Rehabilitation of offenders

127. With regard to the extent of the medical care received by detainees and prisoners and the responsibility of medical practitioners towards them, the health clinic attached to the reform and rehabilitation centres provides full medical and health care and services, including examinations, laboratory analyses and the requisite treatment, for all persons attending the clinic, regardless of whether they are detainees, prisoners or any other person. Such care and services consist in the following:

(a) Medical and health care. The clinic is equipped with the best medical appliances and includes an examination room containing the requisite medical equipment in which the medical officer receives patients at any time of the day or night;

(b) The first aid and emergency unit. The clinic includes a special unit for that purpose, consisting of a room in which the condition of patients is monitored round-the-clock by a medical duty officer and a nurse who are present at all times of the day and night, thereby ensuring first-rate health care, bearing in mind the fact that the unit is equipped with eight beds and all the requisite medical appliances and equipment and has a highly experienced nursing staff working under direct medical supervision on a 24-hour basis as already mentioned;

(c) The laboratory analysis unit. The clinic has a special laboratory analysis unit that contains the equipment needed to carry out routine and in-depth analyses for its daily intake of patients;

(d) Dental care. In addition to the above-mentioned services, the clinic has a special dental unit containing all the medical equipment needed to treat any patient during its official daily working hours. It is staffed by a dentist and a dental technician.

128. The above are only some of the services provided. For the benefit of inmates who need to be transferred to a hospital, and particularly the Al-Bashir Hospital, in order to consult a medical specialist or in emergency situations, the clinic attached to the reform centre has two ambulances belonging to the administration of the centre which are fully equipped and ready to transfer any inmate or patient at any moment and without delay, since the administration of the centre cooperates and coordinates to the fullest extent with the administration of the health clinic.

129. Accordingly, any detainee, prisoner or other person attending the health clinic receives all the requisite medical care and attention under the direct supervision of the medical duty officer and his condition is monitored, either in the clinic or at the hospital to which he is transferred, until he is fully cured.

130. With regard to the second question, namely whether detainees or prisoners are entitled to psychiatric or physical therapy or compensation:

(a) With regard to psychotherapy, any inmate suffering from mental disturbance enjoys all his rights in regard to medical treatment and therapy,

since the health clinic has a psychiatric specialist who is in attendance there on one day of every week (Sunday) and receives any person suffering from a mental disease or disturbance. The requisite treatment is dispensed through the clinic's pharmacy, which is stocked with all the necessary medicines and remedies;

(b) With regard to physical therapy, the inmates enjoy all their rights in respect of physical exercise and sport, since the centre contains halls and sports facilities intended for that purpose;

(c) The relationship between the prison medical officer and the prisoner is a doctor/patient rather than a doctor/prisoner relationship, since the medical officer treats all prisoners in the same way as any other patient attending the clinic, regardless of whether he is a member of the police force or any branch of the administration or any other person. It is a purely medical relationship in which all patients, without exception, are treated without any discrimination or segregation. The doctor/patient relationship is the same as that found in any other medical centre outside the prison in which the patient's condition is monitored until he is fully cured.

131. In addition to the tasks assigned to them at the clinic, the duties of the medical officers include the control and inspection of the dormitories in order to ensure that they do not contain any food that is spoilt or unfit for human consumption. They also periodically check and monitor the inmates' state of health, inspect the cafeterias and the meals prepared for the inmates and monitor the state of health of inmates placed in the health isolation unit if they are afflicted with infectious or contagious diseases such as scabies, some types of lice, pulmonary tuberculosis, AIDS, etc.

Staff training programmes

132. With regard to the training of law-enforcement officials, criminal investigation officers, and particularly those working in the Police Department, customarily attend lectures and courses at the Police Academy, which is attached to the Directorate of Public Security. There is also a Judicial Academy, established under the terms of a special legislative act, in which university post-graduates receive two years' training in judicial procedures.

133. In this connection, it should be noted that orders from higher-ranking officials cannot be invoked as a justification for torture.

134. With regard to the enforceability of the Convention under Jordanian law, article 33 of the Jordanian Constitution stipulates as follows:

> "1. Only the King is empowered to declare war, conclude peace and ratify treaties and conventions.
>
> "2. Treaties and conventions which entail any costs to the State Treasury or any encroachment on the public or private rights of

Jordanians shall not enter into force unless approved by the National Assembly and secret clauses in any treaty or convention may under no circumstances contradict the publicly announced clauses."

135. It is evident from those provisions that a convention does not enter into force immediately after its signature or ratification, since it must be incorporated in Jordanian law through a special legislative act. However, when signing or ratifying an international convention, the Jordanian Government undertakes to observe all its provisions and regards it as having the force of law. This is the practice that has been followed by the Jordanian judiciary.